

UNITED STATES OF AMERICA :
 :
 v. : CR.NO.00-692-01
 :
 DENNIS FREEMAN :

ROBERT F. KELLY, Sr. J. APRIL 9, 2002

On August 31, 2000, the Officer executed a second search and seizure warrant, No. 97334 at 5507 Master Street, Philadelphia, Pennsylvania, where Defendant Freeman is alleged to have had 129 grams of cocaine powder and drug paraphernalia.

Presently before the Court is a Motion filed by Dennis Freeman to Suppress the Seizure of Evidence from 5412 Jefferson Street, 5507 Master Street, and the Mercedes Benz. Hearings were held on these Motion on November 8, 2001 and March 7, 2002. ¹

From the evidence produced at the Hearings, and the documents submitted into evidence, the Court makes the following Findings:

Search and Seizure Warrant No. 97333 for 5412 Jefferson Street

The affidavits submitted for this search warrant were assigned by Officer Brian Reynolds and indicate that he received information from a concerned citizen regarding sales of narcotics on the highway of 5500 Lansdowne Avenue. The concerned citizen stated that the narcotics for the operation are stored at 5412 Jefferson Street and that there are several black males involved in the operation. He further states that their names are Dennis Freeman, his brother, Jamie or Jammy, and Leroy. He also stated that they have several street workers that work the corner of Allison and Lansdowne Avenue. He said the males used different vehicles, stating that Dennis Freeman drives a black Mercedes Benz, PA No. DKK2310; his brother Jamie or Jammy drives a tan Cadillac Escalade, PA No. DKK2312; and that Leroy drives a black Jeep Grand Cherokee.

The Affidavit goes on to state that Officer Reynolds conducted a surveillance at 5412 Jefferson Street on August 30, 2000 at approximately 2:08 PM. At that time, he observed Dennis Freeman go into the property, located at 5412 Jefferson Street, carrying a black plastic bag. At approximately 2:45 PM, Reynolds observed a black Buick with tinted windows, PA No.

¹The long delay between these two hearings was occasioned by the illness of defense counsel for Defendant Freeman.

ALR9162, pull up to 5412 Jefferson Street, and black male #2 enter the property. At approximately 3:00 PM, black male #2 exited the property looking around and holding two (2) clear plastic baggies containing smaller red objects, which he believed to be bundles of narcotics. Black male #2 placed one bundle of narcotics in his front pants pocket and one in his rear pants pocket. He then left 5412 Jefferson Street and went to 55th and Merion Avenue, where he was picked up by the black Buick with tinted windows. That vehicle was followed to 5500 Lansdowne Avenue (Northeast corner of Allison Street and Lansdowne Avenue), where black male #2 exited the Buick and met with black male #3. Officers then observed black male #2 and black male #3 involved in four (4) narcotic transactions with unknown black males. During that time, Officers observed black males #2 and #3 having conversations with other unknown black males, at which time, the unknown black males would hand black male #3 an undetermined amount of United States currency for small objects that black male #2 would retrieve from his rear pants pocket. The unknown black males would then leave the area.

At approximately 3:22 PM, Police Officer Reynolds observed a tan Cadillac Escalade parked at 55th and Jefferson Streets, at which time black male #4 exited, looking around and carrying a white plastic container and a brown bag. Black male #4 went into 5412 Jefferson Street. At 3:40 PM, Police Officer Stubbs was with a Confidential Informant ("C/T"), who was briefed and searched prior to going to 5500 Lansdowne Avenue (Southwest corner of Allison Street and Lansdowne Avenue) to make a narcotic purchase. At that location, Officers observed the C/T have a brief conversation with black male #3, at which time Police Officer Walker observed black male #3 point to black male #2. The C/T then had a brief conversation with black male #2, handed him \$40 in United States currency, pre-recorded buy money. At that time, black

male#2reachedinto hisrearpantspocketand retrievedsmall objects handingthemto theC/I. TheC/IthenreturnedtoPoliceOfficerStubbsandturnedover eight(8)clearvials withredtops, eachcontainingan off-white chunky substance. TheAffidavitgoesontoallege thattheC/Iwas keptundersurveillancebyPoliceOfficerswhoneverlost sightofhim. Afterthepurchase,the C/IwasagainsearchedbyPoliceOfficerswithnegative results. OfficerReynoldsthen conductedafieldtestononeoftheitemspurchasedbytheC/I, whichwaspositiveforthe presenceofcocainebase.

TheAffidavitalsoallegesthattheC/Ihasbeenusedinthepastandhasprovento betrustworthyandreliable. Baseduponallofthis, OfficerReynoldsrequestedaSearchWarrant forthatproperty.

DISCUSSION

Itisclear to theCourtthattheobservationsmadebytheOfficersprovided probablecausetobelievethatdrugswerebeingsoldbyFreemanand othersandthatthesales weretakingplaceat5500LansdowneAvenue(SoutheastcornerofAllisonStreetand LansdowneAvenue). ItisalsoevidentfromtheAffidavitthatdrugsthatwereusedtosupply salesinthatareawerebeingstoredat5412JeffersonStreet. ItisalsoclearfromtheAffidavit thattheblackMercedesBenzPANo.DKK2310andtheblackBuickwithtinted windowsPA No.ALR9162wereusedinthisoperation. ItisalsoclearfromtheAffidavitthattheAffiantdid not relyuponthe credibilityoftheconcernedcitizen, butsimplyacteduponinformationgivenby theconcernedcitizentostartsurveillanceof5412JeffersonAvenueandthecornerofAllison StreetandLansdowneAvenue. TheobservationsmadebytheOfficers themselvesprovided probablecausefortheissuanceofthese searchandseizurewarrant.

Although the Officers used a C/I to make a purchase of drugs at the corner of Allison and Lansdowne Avenue, they did not rely on the credibility of the C/I because they searched him prior to giving him recorded money to make a drug purchase; they verified that he had no drugs on him prior to making the purchase; they kept him under constant surveillance from the time he left them to the time he made the purchase; and after he made the purchase, they obtained from him the drugs that he had purchased. Under these circumstances, there was no need for the Police to rely on the C/I. If, under all of the facts set forth in the Affidavit, that there was probable cause for the issuance of this search warrant.

Did the Search Warrant No. 97333 for “5412 Jefferson Street” Properly Identify the Premises to be Searched?

Defendant contends that the warrant was defective because it did not identify with particularity that the two-story masonry dwelling was a duplex. Defendant relies on Maryland v. Garrison, 480 U.S. 79, 85, 107 S.Ct. 1013, 1017 (1987). The specific description of the premises to be searched in this case was 5412 Jefferson Street (2-story masonry open porch front). Defendant contends that the description on the search warrant lacks particularity because the property is registered as a two-family dwelling and that the police would have been able to discover this had they researched property records in City Hall. Defendant also contends that the police should have known that it was a two-family dwelling because there were two doorbells located at the front entrance of the building. Officer Reynold's testimony indicated that the property records that he looked at revealed that the property was a converted apartment. He did not observe any of the usual indicators of apartments; such as, two doorbells or two electric meters, or two mailboxes. Upon entering the front door of the property, the police went through

a second door, and only then noticed the interior of that unit was partitioned into two (2) apartments, one upstairs and one downstairs. The evidence shows that the officers limited their search to the downstairs apartment. While executing that warrant, the officers knew that there were individuals on the second floor who were making renovations to that area of the house, and some officers went to the second floor to ask the workmen to go outside of the house while the search of the first floor was being conducted. The testimony was that there was no one living on the second floor and that that area was not, in fact, searched. There is nothing in the evidence to indicate that the police knew, or should have known, or had reason to believe, that 5412 Jefferson Street was anything other than a single family house. Evidence of the existence of two doorbells did not emerge until after the warrant was issued and executed and has nothing to do with whether or not the warrant was validly issued. In any event, the police limited their search to the first floor apartment. Therefore, I find that the warrant properly and specifically described the premises to be searched.

Execution of Search and Seizure Warrant No. 97333 for 5412 Jefferson Street

Defendant next contends that the police violated the “knock and announce” rule. Generally, police authorized by warrant to enter a private dwelling must comply with the “knock and announce” rule, announcing their authority and purpose before entering. In this case, Officer Carl Stubb testified that on August 31, 2000, at 5:15 PM, he was at 5412 Jefferson Street for the purpose of executing a search warrant. He testified that it was his duty to knock and announce. He testified that when he got to the first closed inner door, he banged on the door and announced “Police” “Search Warrant”, and at that time he heard a screeching sound, which he believed was someone either running at that time or getting rid of evidence, so he kicked the door in.

Immediately inside the door was the Defendant Freeman with a razor blade in his hand, which he was ordered to drop, and he was placed under arrest. Police officers are allowed to force entry into a dwelling after knocking and announcing their presence, where officers believed Defendant was involved in drug activity, and drugs or other evidence could be readily destroyed if entry was delayed, and they hear hurried footsteps from inside the apartment. United States v. Stiver, 9 F.3d 298, 302 (3d Cir. 1993). In the present case where police knocked, announced their identity and purpose, and heard a “screeching sound,” and knowing that they were in search of drugs, and that drugs are very easily disposed of, they had the right to force their way into the premises. Under these circumstances, they had the right to forcibly enter the property for the preservation of evidence.

Seizure of Vehicles

On August 31, 2000, two (2) Mercedes Benz motor vehicles were seized after the search of 5412 Jefferson Street. Defendant Freeman contends that these vehicles were seized without probable cause. Where police have probable cause to believe that an automobile has contraband, they may search that vehicle without a warrant. U.S. v. Ross, 102 S.Ct. 2157 (1982). In this case, the police had observed the black Mercedes Benz, PADKK2310 during their surveillance of the Defendant for criminal activity on August 30, 2000. When police executed the search warrant (No. 97333) on August 31, 2000, Officer Reynold testified: “A.I asked him where the key to his Mercedes Benz was. At which time, he told me it was on the bureau. I then recovered that key. At which time I informed him, his car was being confiscated. At which time he stated to me, okay, but be careful, ‘cause under the front seat there is a hand gun.” I believe that the police had probable cause to seize and search the automobile because of

the observations they made on August 30, 2000. U.S.v.Ross, 102 S.Ct. 2157 (1982). Once the Defendant volunteered that there was a gun in the car, they had additional ground to seize and search the vehicle. See Caddy v. Dombrowski, 93 S.Ct. 2523 (1973), where a search of a vehicle was approved because the police reasonably believed a disabled automobile contained a gun because the automobile belonged to a policeman.

For these reasons, I find that the search and seizure of the Mercedes Benz, PA DKK2310 was lawful.

Search of 5507 Master Street on August 31, 2000

After executing the search warrant at 5412 Jefferson Street, the police went to 5507 Master Street, a residence owned by Defendant Dennis Freeman. They secured the property fearing that evidence would be destroyed there. A search warrant for 5507 Master Street was issued by a Magistrate on August 31, 2000. Defendant challenges the validity of this search warrant. The Affidavits submitted for this search warrant incorporate the first two paragraphs of the Affidavit that was submitted for the search warrant for 5412 Jefferson Street. In addition, it recites that during the surveillance of 5412 Jefferson Street, police witnessed Defendant Dennis Freeman carrying a package he obtained from 5507 Master Street into 5412 Jefferson Street. Police determined, from public records, that Dennis Freeman was the registered owner of 5507 Master Street, and that it was a vacant property in the process of renovation.

I find that based upon the extensive drug activity observed by the officers in and around 5412 Jefferson Street, and from 5412 Jefferson Street to the area of Allison Street and Lansdowne Avenue, and Freeman, going to the house at 5507 Master Street, which he entered using a key, and left within one minute carrying a brown bag which he returned to 5412 Jefferson

Street, provided a substantial basis for the conclusion of the Magistrate Judge that there was probable cause to issue a search warrant for 5507 Master Street.

I, therefore, enter the following Order.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :
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 v. : CR.NO.00-692-01
 :
 DENNIS FREEMAN :

ORDER

AND NOW, this 9th day of APRIL, 2002, it is hereby ORDERED and DECREED
that Defendant's Motion to Suppress Evidence from the Execution of the Search Warrant at 5412
Jefferson Street (No. 97333) and 5507 Master Street (No. 97334), and from the 2000 black
Mercedes Benz, PADKK2310, is hereby DENIED.

BY THE COURT:

ROBERT F. KELLY, Sr. J.